

REMARKS

The claims have been amended so as to incorporate the limitations of Claim 4 into Claim 3. In accordance with the prior Office Action, it is respectfully submitted that Claim 3 is allowable.

The rejection of Claims 1, 3, and 5-8 as being fully anticipated by Silver is respectfully traversed.

The main claim, Claim 1, from which each of Claims 5-8 depend, has several features which are not found in the Silver reference.

First, Claim 1 calls for "A cutter for separating pre-determined quantities of food from a food block". Silver does not show this. Silver shows merely a "measuring stick". It is not a cutter; otherwise, it would be called "a cutter" or a "knife". Instead, it is called simply a "measuring stick" in the title of the patent, in the claim of the patent, and in the detailed description of Figure 1.

Silver does not even disclose what his measuring stick is intended to measure. For all one reading the patent knows, it is a measuring stick for measuring liquids such as cooking oil, vinegar, etc., or powdered or granular solids such as flour, salt, corn meal, etc., partially filling a container of a specific size. Thus, one would thrust the measuring stick downwardly into the liquid or powder, etc., until the stick hits

bottom, and the measurement, in cups, tablespoons or teaspoons would be indicated by the measuring stick.

It is only by the use of hindsight that the Examiner suggests the possible use of the measuring stick to measure solid sticks of butter, cheese, lard, etc.

Secondly, Claim 1 calls for "a cutting edge". The Examiner, again with an imaginative use of hindsight, suggests that the distal end of the measuring stick shown in the Silver patent is capable of cutting butter at room temperature. This interpretation tacitly concedes that the edge is not capable of cutting such a stick of butter if it has been cooled in a refrigerator or frozen in the freezer.

The distal end of the Silver device referred to by the Examiner is only slightly beveled, as is shown in Figures 2 and 3. Moreover, this is not for any known functional purpose, but simply for decoration because the Silver patent is a design patent and that is one of the ornamental features of the device. The slight decorative beveling of the end does not produce a "cutting edge".

A further feature which Silver does not have is the feature which is recited by the following language:

"In which said cutting edge has a width at least substantially equal to the width of said food block in the direction in which it is to be cut."

There is absolutely no disclosure or suggestion of this feature in the Silver design patent. Since there is no disclosure of what the measuring stick is intended to measure, there cannot even be an implication of the relationship between the width of the measuring stick and the width of a food block.

Claim 5 depends from Claim 1 and specifies that the body member of the cutter has a "plurality of sets of measuring marks, each for use in cutting food blocks of a different size".

Thus, referring to page 6, lines 10-20, of the specification, two different sets of markings are provided on opposite sides of the cutter 10 so as to accommodate two different sizes of food blocks such as butter distributed in two different standard sizes in the United States. Of course, the distances from the cutting edge to the mark will be translated into a different volume measurement, depending upon the size of the food block involved.

The different sizes of butter sticks are best illustrated by comparing the width W of the block 24 shown in Figure 2 with the width X for the butter block shown in Figure 5.

Silver does not have any such plurality of sets of measuring marks which are used for cutting food blocks of a different size, as is required by Claim 5.

Silver shows two different measuring scales, but the points on each scale are equivalent to the corresponding points on the other scale. That is, as shown in Figure 1, the marks indicating one tablespoon are at the same distance from the distal end of the measuring stick on both scales. Similarly, the eight tablespoons measurement and the one-half cup measurements are the same distance from the distal end.

Claim 6 depends from and is allowable with Claim 5 and recites that the body member of the cutter has two opposed broad surfaces, with one of the sets of markings being located on one of the surfaces and the other set being located on the other said surfaces. Figure 4 of the Silver patent shows that there are no markings on the other side of the measuring stick. Therefore, this feature also is not disclosed by Silver.

Claim 7 also depends from Claim 5 and specifies that the different sets of measurement marks are for butter blocks from two different regions having different standard regional sizes. This also is not shown by the Silver reference.

Claim 8 depends from Claim 1 and specifies that the body member of the cutter has a width at least as great as the width of the cutting edge so that the cutter can be used in the manner of a spatula. Since Silver does not have a cutting edge, it also does not have this limitation.

None of Claims 1, 3 or 5 through 8 is anticipated by the Silver reference.

The further rejection of Claims 9 and 10 as being obvious over Silver in view of Wentzel (2,948,064) and Youngberg (2,309,814) also is respectfully traversed.

The Silver reference has been distinguished in the discussion above; it merely shows a measuring stick and does not show or suggest using it for measuring butter or any other solid block of food.

Because there is no suggestion of how the Silver measuring stick should be used, there is no suggestion that the Silver reference should be combined with either Wentzel or Youngberg.

Claim 9 recites, as step (a), selecting a cutter substantially as set forth in Claim 1 and discussed above.

Youngberg merely shows a cutter with a sinuous blade which is used to cut by pressing downwardly in order to make butter pieces of a sinuous shape. It does not suggest using the same device for both measuring and cutting the butter.

Wentzel does not suggest using as the cutting edge the edge from which the measurement marks indicate distances and quantities of material to be cut. Therefore, Wentzel does not providing for simply measuring the quantity to be cut, tipping the cutter upwardly and thrusting downwardly.

In summary, the claims represent a very simple but ingenious invention. It should not be adjudged to be obvious simply because it is so simple. Where the invention is so simple, the use of hindsight is very tempting. As it has been shown above, the Examiner's imaginative interpretation of the references, and particularly the Silver reference, show the effects of hindsight.

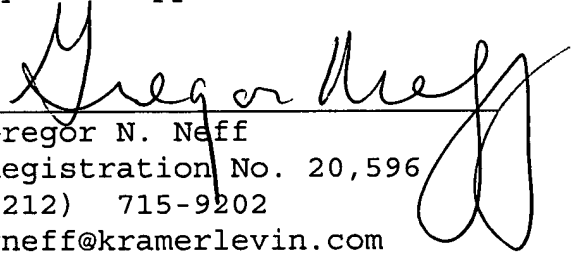
The Applicants have devised a very simple yet effective and quick cutter and method which deserves the grant of a patent.

It is respectfully requested that the claims be allowed and that the application be passed to issue.

Respectfully submitted,

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